being able to operate a viable business. Second, it has the effect of suppressing payphone usage generally.

With the deployed base of payphones already having fallen by more than three-quarters from the level that the Commission found consistent with the Congressional mandate to ensure their "widespread deployment," the consequences of removing even a single payphone has greatly magnified consequences. Payphone providers have already been forced to remove multiple payphones from all but the highest volume locations, and to eliminate payphones altogether from many locations. As a result, instead of having ready access to several payphones in their immediate neighborhoods, many payphone users now have to rely on a single, more distant payphone. If those remaining payphones continue to disappear, and users can no longer rely on payphones for their calling needs, it is easy to foresee in the very near term, the collapse of the entire remaining base.

F. History of Payphone Line Service and USF

APCC has advocated USF support for payphone line service in the past. In 2001-02, APCC submitted comments to the federal-state Joint Board on universal service advocating that USF support be provided for payphone line service. In its decision in the proceeding,[43] the Joint Board did address the proposal to some extent, finding that support for payphone line service should not be recommended at that time for several reasons. The Joint Board said that including payphone line service as a service subject to USF support would be in conflict with one of the statutory principles required to be considered -- that services supported be "subscribed to by a substantial majority of residential customers."[44] But this is not a binding instruction if the

[43] *Joint Board,* 17 FCC Rcd 14115-17.

[44] *Id.* 14115.

Commission finds other statutory criteria are met. As we demonstrate below, the public interest in providing Lifeline support for payphone line service is overwhelming since payphones are a crucial part of universal service and play a critical role in guaranteeing universal service in those times when it is most needed, during emergencies and disasters, both natural and caused by human events.

The Joint Board was also concerned that USF support for payphone line service as then proposed did not fit into any existing universal service funding mechanism.[45] The current proposal does fit into an existing mechanism, the Lifeline support mechanism.

Another concern of the Joint Board was that making payphone line service subject to universal support might reduce the number of ETCs. Under Section 214(e) of the Act, 47 USC § 214(e), an ETC must offer all services that are eligible for USF support. Since mobile carriers and many CLECs do not offer payphone lines, those not offering payphone lines would lose their ETC status.[46]

The Joint Board's conclusion is based on an erroneous factual premise. The unique features of payphone lines that are needed by PSPs are requirements imposed on specific classes of carriers. For example, the requirement that serving LECs offer payphone service providers ("PSP"s) blocking at the central office level of certain international call dialing sequences was imposed only on LECs and then only where "technically feasible."[47] At the outset, it should be

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45 *Id.*

46 *Id.* 14116.

47 *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Reconsideration Order* 7 FCC Rcd 4355, 4361 ("*International Direct Dial Blocking*"). Similarly, waivers and exemptions are available where other services useful to PSPs and otherwise required are not technically feasible to implement. *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Memorandum Opinion and Order, 12 FCC Rcd 11606 (CCB 1997). *See also Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation,* Third Report and Order, 11 FCC Rcd 17021,

observed that ETCs qualifying for Lifeline support are already required to offer toll limitations services.[48] In any event, wireless carriers are not LECs; they are Commercial Mobiles Services providers.[49] Moreover, wireless carriers already offer international blocking service. As for CLECs, the Commission found that the blocking service is relatively easily implemented but to the extent a CLEC ETC is incapable of offering the service because it is not "technically feasible," there is no requirement to offer the service. Similarly, the requirement for specific coding digits to accompany the transmitted ANIs when a call originating from a payphone is sent through the network was imposed on all LECs[50] who could efficiently recover from PSPs within a reasonable time the cost of implementing the capability.[51] Thus, the requirement either has applied to CLECs *ab initio* or not at all, and in any event, CLECs can waive out of the requirement under the established criteria.[52] In sum, all a wireless or CLEC with ETC status

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¶ 8 (1996) (Service must be offered only "where technically feasible or economically reasonable.")

[48] *See* 47 CFR §54.101(a)(9). *See also* 47 CFR § 54.403(c).

[49] *See* 47 U.S.C. § 332.

[50] *See Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Memorandum Opinion and Order, 13 FCC Rcd 4998, ¶ 23 (CCB 1998) ("*Coding Digits*").

[51] *Id.* ¶ 73 *et seq.* While *Coding Digits* by its terms granted a waiver from the requirement of providing payphone specific coding digits, to only mid-sized and small LECs, the criteria used in developing the waiver – whether a LEC could efficiently effectuate a cost recovery from PSPs within a reasonable time for the costs of implementing the upgrades necessary to provide payphone specific digits—would apply equally to CLECs.

[52] *See* sources cited in n.47 above; *see also Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation,* Memorandum Opinion and Order, 12 FCC Rcd 14857, ¶ 9 (CCB 1996) (in light of economic burden, service need only be offered after Bona Fide Request).

needs to do is designate a class of service called "payphone lines"[53] in order to continue to qualify for USF.[54]

While the Joint Board noted the decline in payphones, an additional concern raised by the Joint Board was that there was no evidence that Lifeline support for payphone line service would make payphones profitable enough to keep payphones in service, or that the support would not simply provide a windfall for some payphones without providing enough economic support to keep otherwise uneconomic payphones in service. But as we have demonstrated above, the number of payphones is in rapid decline. Other programs have not been successful in ensuring that payphones remain deployed in sufficient numbers to serve the public interest. While there can be no guarantee that Lifeline support for payphone line service will keep all payphones that would otherwise go out of service in place, there can be no question but that many payphones providing a vital service, as described above, would remain in service with the benefit of Lifeline

[53] Some LECs offer a rich array of other features for payphone lines. For example, LECs offer out bound only service, various caller ID restrictions or options, additional 1+ dialing blocking at the central office level, total toll restriction, call screening services, 900 blocking, etc. But these services are available as well to other classes of users (such as business and/or residence subscribers) who may also have specialized needs. Thus, unlike the international toll blocking services, or the coding digits that are routinely a part of the "payphone line" and to which the PSP is subscribed simply by ordering "payphone" service, the ancillary services available to PSPs are not part of a payphone line.

[54] The Joint Board also confused the requirement that a payphone line be available with the requirement that payphones be capable of being deployed on a particular line. Thus, the Joint Board noted that there may be payphones capable of being deployed on wireless connections and that was an issue that should be explored in a proceeding to be launched by the Commission. *Joint Board* at n.120. In fact, some PSPs already subscribe to service from wireless carriers and/or ETCs. But in any event, the inquiry is irrelevant. All the carrier need do is make a facility available, "Smart" phones are instrument implemented, and only need to have a line connection from the carrier switch, *See Registration of Coin Operated Telephones Under Part 68 of the Commission's Rules and Regulations*, FCC 84-270, 1984 FCC Lexis 2469 57 P&F Rd. Reg. 133 (June 15, 1984). Of course if a carrier offers implementation of coin lines through central office controls, the carrier must also make such a line available to independent PSPs. *See, e.g., Ameritech's Plan to Provide Comparable Efficient Interconnection to Providers of Pay Telephone Service; Implementation of the Pay Telephone and Compensation Provisions of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 4238 (April 15, 1997).

support. As for the Joint Board's concern that the USF subsidy would be a windfall for some payphones, it is addressed in the next section, where we discuss implementation of Lifeline support for payphone line service.

The Joint Board did recommend that the Commission issue a notice of inquiry to determine whether USF support is necessary. The Commission, however, declined to do so, noting that state Public Interest Payphone programs were available to address subsidies for specific payphones, and that parties could petition the FCC if they believed Public Interest Payphone programs are inadequate.[55]

This petition is partially in response to the Commission's invitation. It comes in an environment entirely different than the environment at the time of the Joint Board's and the Commission's earlier decisions were rendered. As discussed above, in part due to the unintended consequence of the Commission's extension of universal service support to prepaid mobile providers, the very existence of payphones is now threatened. The Commission must act lest it preside over the total disappearance of this vital link for those who otherwise have no way of making calls.

IV. THE COMMISSION SHOULD PRESERVE SERVICE TO ALL CONSUMERS AND REDRESS COMPETITIVE IMBALANCE BY MAKING PAYPHONE LINES ELIGIBLE FOR USF LIFELINE SUPPORT

As we have demonstrated above, payphones are a vital universal service link and in many cases provide a far more cost effective way of providing service than, for example, the Commission's current policy of allowing Lifeline support to mobile carriers. As discussed above, however, the Commission's extension of universal service support to mobile carriers has had the perverse consequence of decreasing universal access to critical calling services. The

[55] *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15099-100 (2003).

great majority of Americans without phone service have not and cannot—at least without completing overburdening the Universal Service Fund—receive a subsidized mobile phone. Yet if even a small number of payphone users substitute subsidized mobile phones for payphone calling, payphones will disappear leaving all those who previously relied on them and who have not received a mobile phone without any access to phone service. Moreover, as discussed above, the current policy is also not competitively neutral in that it favors mobile carriers over payphone service providers.

The Commission can address these imbalances by providing Lifeline support for payphone line service. The Lifeline support for payphone line service can be implemented at a relatively modest cost and, as illustrated above, has efficiencies as compared to the cost of mobile support. At the moment, as discussed above, there are 475,000 or fewer remaining payphones. APCC proposes that payphone line service be eligible for Lifeline support at the combined Tier 1, Tier 2 and Tier 3 level of support for a maximum total cost of about $57,000,000 annually.[56] By comparison to the amounts being expended, and growing, on mobile Lifeline support, the cost of Lifeline support for payphone line service is relatively low. In just the first two quarters of 2010, universal support for Tracfone alone was at an annual rate of $330,000,000.[57] Virgin Mobile, just recently ramping up after its 2009 ETC designation in only three (3) states and part of New York,[58] has received about $14,000,000 in the second

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[56] *See* note 61, *infra.*

[57] *See FCC Filings: 2010: Quarterly Administrative Filings for 2010,* Chart L:104—Quarterly Low Income Support Disbursements by Company, available at USAC.Org. For the first two quarters of 2010, TracFone collected $165,000,000 from the Lifeline fund. *Id.*

[58] *See* n. 40, *supra.*

quarter of 2010 alone.[59] These amounts will grow, as the Commission has also recently issued orders that will allow additional wireless carriers to qualify as ETCs.[60] Each dollar spent of support of mobile provides only limited calling to a single subscriber; each dollar of support for payphone line service provides service to dozens of users on an unlimited basis,

The Commission can readily implement this relief for payphone line service through existing mechanisms. Attached to this petition are proposed rule changes that would allow Lifeline support to payphone line service. To summarize, the proposed amendments would amend Section 54.400(a) to allow payphone lines actually used for the resale of service to the public to qualify for Lifeline support at a new Tier 5 "Payphone Service" level, set at the same rate as the combined amounts of the Tier 1, Tier 2, and Tier 3 amounts under 47 CFR §§54.403(a)(1)-(3). The ETC receiving the support must pass through the entire amount to the PSP subscribing to the line.[61] The PSP would be required under Section 54.410(a) to certify that

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[59] *See* source cited in n. 57, *supra*. Virgin Mobile has applications for approval as an ETC pending in at least four (4) other states and the District of Columbia. In just two years, the cost to the Lifeline program of providing support for mobile ETCs has grown to an annual cost of $385 million dollars and the program is in its incipient stages.

[60] *See* n. 40, *supra*. The Commission granted additional petitions for forbearance, a prerequisite to qualifying as an ETC for non-facilities based wireless carriers to qualify as ETCs. Applications from additional wireless carriers to become ETCs are also on file.

[61] The amount of Lifeline support per payphone would normally depend upon the availability of maximum carrier and state contributions under Tier 1 and Tier 2. But, in light of the Section 276 mandate, the Commission can and should dispense with the other requirements contained in 47 CFR §§54.403(a)(1)-(3) except the requirement that the full amount of the Lifeline support must be passed through to the end user. As for the requirement that state regulatory authorities approve any reduction in rates given by the ETC as a result of additional support received by the ETC under Tier 1 and/or Tier 2, the approval is, in the case of payphone line rates, superfluous since the reduction would be functionally mandated by Section 276. *See Wisconsin Public Service Commission.* Since payphone line rates are set on a non-jurisdictional, total cost basis by federal mandate, any increase in recovery for the federal portion of the total cost recovery would have to be offset by a concurrent reduction in state revenue. In any event, all fifty states have already approved the reductions in line rates required under 47 C.F.R. § 54.403(a)(2). *See, e.g., Rural Broadband Report,* Public Notice, 24 FCC Rcd 12791, n.352 (October 19, 2009); *Federal-*

the line is actually being used for resale of services to the public through a payphone. Payphone lines would be reimbursement eligible for the ETC under 47 C.F.R. § 54.407(a), based on the number of payphone lines the carrier is providing.

The Lifeline support would apply to all payphone lines. The alternative is a "needs-based" showing on a payphone-by-phone basis. Administering such a program would be a significant burden. Certainly, it would be difficult for the Commission to administer such a program for payphones across the country. It is not clear state commissions would be able or willing to do so in their own states. Moreover, APCC's understanding is that a significant factor in establishment of public interest payphone programs and a cause of their demise is the heavy burden on state commissions in administering a "needs-based" program, where a determination must be made on a payphone-by-phone basis whether a particular payphone warrants USF support.[62]

State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47U.S.C. §214(e)(1)(A) and 47 C.F.R. §54.201(i), 20 FCC Rcd 15095, n.16 (2005).

As for the state matching requirement of 47 CFR §54.403(a)(3), the Commission should not discriminate between states in carrying out the federal mandate to ensure the availability of payphone service. Moreover, one of the reasons Commission intervention is necessary here is because the states have not adequately supported the availability of payphones. *See* discussion, *supra,* at Notes 34-37 and accompanying text. It would be circular to say that additional support under Tier 3 will be denied because a state is not providing state USF support since that is one of the factors making the Commission's intervention necessary. Moreover, to the extent states have already adopted Lifeline support, it would presumably apply to support for payphone lines as well. In any event, in those situations where there is no state matching for payphone lines because for some reason the state support does not apply, and if the Commission requires there to be a state match under Tier 3, the effect would be simply to reduce the sum of the Tier 1, Tier 2, and Tier 3, with a commensurate effect on the amount of federal Lifeline payphone line support.

[62] *See also* n. 37, *supra.* There is some risk, as the Joint Board noted, that there is a possibility that there could be increased return to some payphones that are already profitable. But given the low margins that characterize the payphone industry, the risk is relatively marginal.

A related concern is that the availability of Lifeline support will stimulate more payphones to be installed thus raising the cost to the USF of providing Lifeline support to

V. USF SUPPORT FOR PAYPHONE LINES SATISFIES THE STATUTORY CRITERIA

Payphone lines clearly satisfy the statutory criteria for designation as a supported service.[63] Payphone lines, as an essential component of payphone services, are clearly essential to the public health and safety, [64]as discussed above. Even the Joint Board acknowledged that it is

> concerned that [the decline noted by the Joint Board] in the availability of payphones might reduce access to emergency services, especially in remote areas, and might adversely impact the ability of low-income citizens to have continued access to phone service.

Joint Board, 17 FCC Rcd at 17116. Since the Joint Board expressed its concern, the number of payphones in service has declined more than precipitously—there are now less than one-fourth the number of payphones in service as when the Joint Board expressed its concern. Yet, as discussed above, payphones continue to play a vital role in times of emergency or calamity and to provide ever more vital access to the telecommunications network for low income consumers.

The services in question are deployed in public telecommunications networks operated by telecommunications carriers.[65] As discussed above in response to the Joint Board's

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payphone line service. This is highly unlikely. The upfront and transaction costs of site preparation, hook-up, wiring, installation, sales and contracting, etc. are typically in the $500-600 or greater range. The availability of Lifeline support at an otherwise unprofitable location is highly unlikely to make the location attractive given these significant entry costs, the low margins, and other costs associated with placing and maintaining the payphone. Moreover, we note that as a practical matter, Lifeline support is more designed to hold the existing base rather than to stimulate additional payphone, although from the perspective of the Section 276 mandate, the latter is not a result to be discouraged.

[63] 47 USC § 254(c)(1).

[64] 47 USC § 254(c)(1)(A).

[65] 47 USC § 254(c)(1)(C).

observation that a majority of residential customers have not subscribed to the service, [66] by definition this criterion could not be met by "payphone line service", but this condition is not mandatory, and need only be "considered" by the Commission. Clearly, where as here, the last criterion of the statute, that the service to be supported is consistent with the public interest, is so strongly met, [67] the Commission should find in favor of Lifeline support. As discussed above, payphones are the ultimate form of universal service –available to any end user, 24/7/365, on demand without any advance ordering or qualification and without the need for the end user's own terminal, in times of emergency, national disaster, or for the daily conduct of essential and non-essential personal and business activities. They are vital public safety and public health safeguards.

VI. CONCLUSION

For the reasons shown above, the Commission should initiate a rulemaking to make payphone lines eligible for Lifeline support from the Universal Service Fund at the Combined Tier 1, Tier 2 and Tier 3 Level, in order to ensure that payphones continue to remain available to the millions of Americans who rely on them for access to critical calling services.

Respectfully Submitted,

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[66] 47 USC § 254(c)(1)(B).

[67] 47 USC § 254(c)(1)(D).

ATTACHMENT

ATTACHMENT

RULE AMENDMENTS

Sec. 54.400 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) Qualifying low-income consumer. A ``qualifying low-income consumer'' is ***i)*** a consumer who meets the qualifications for Lifeline, as specified in Sec. 54.409***; or ii) a payphone service provider, as defined in Section 276 of the Communications Act, who uses a line in the class of service designated for payphone service in the local exchange where the line is being used to provide payphone service.***

Sec. 54.403 Lifeline support amount.

(a)

(5) Payphone Line Service Tier. Payphone lines shall be eligible for support at a rate equal to the combined Tier 1, Tier 2, and Tier 3 support in the exchange where the payphone line is located without regard to whether the requirements of those Tiers are otherwise met except that the eligible telecommunications carrier shall be required to pass through the full amount of Lifeline support to the payphone service provider.

Sec. 54.407 Reimbursement for offering Lifeline.

(a) Universal service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier, based on the number of qualifying low-income consumers ***and payphone lines*** it serves, under administrative procedures determined by the Administrator.

(b) The eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer ***and payphone line*** served. For each consumer ***and payphone line*** receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the support amount described in Sec. 54.403(c). The eligible telecommunications carrier's universal service support reimbursement shall not exceed the carrier's standard, non-Lifeline rate.

54.410 Certification and Verification of Consumer ***and Payphone Service Provider*** Qualification for Lifeline.

(a) Certification of income ***by consumers and certification by Payphone Service Providers. Each payphone service provider shall certify to the eligible telecommunications carrier providing service to the payphone line, prior to the initiation of service on a payphone line qualifying for support hereunder, that the line will be used to provide payphone service.*** Consumers qualifying under an income-based criterion must present documentation of their household income prior to enrollment in Lifeline.

(1) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate state Lifeline support must comply with state certification procedures to document consumer income-based eligibility for Lifeline prior to that consumer's enrollment if the consumer is qualifying under an income-based criterion.

(2) By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement certification procedures to document consumer-income-based eligibility for Lifeline prior to that consumer's enrollment if the consumer is qualifying under the income-based criterion specified in Sec. 54.409(b). Acceptable documentation of income eligibility includes the prior year's state, federal, or tribal tax return, current income statement from an employer or paycheck stub, a Social Security statement of benefits, a Veterans Administration statement of benefits, a retirement/pension statement of benefits, an Unemployment/Workmen's Compensation statement of benefits, federal or tribal notice letter of participation in General Assistance, a divorce decree, child support, or other official document. If the consumer presents documentation of income that does not cover a full year, such as current pay stubs, the consumer must present three consecutive months worth of the same types of document within that calendar year.

(b) Self-certifications. After income certification procedures are implemented, eligible telecommunications carriers, ***payphone service providers,*** and consumers are required to make certain self-certifications, under penalty of perjury, relating to the Lifeline program. Eligible telecommunications carriers must retain records of their self-certifications and those made by ***payphone service providers and*** consumers.

(1) An officer of the eligible telecommunications carrier in a state that mandates state Lifeline support must certify that the eligible telecommunications carrier is in compliance with state Lifeline income certification procedures and that, to the best of his/her

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knowledge, documentation of income was presented.

(2) An officer of the eligible telecommunications carrier in a state that does not mandate state Lifeline support must certify that the eligible telecommunications carrier has procedures in place to review income documentation and that, to the best of his/her knowledge, the carrier was presented with documentation of the consumer's household income.

(3) Consumers qualifying for Lifeline under an income-based criterion must certify the number of individuals in their households on the document required in Sec. 54.409(d).

(c) Verification of Continued Eligibility. Consumers ***and payphone service providers*** qualifying for Lifeline may be required to verify continued eligibility on an annual basis. ***Payphone service providers shall supply verification on an annual basis that the payphone line receiving Lifeline support is being used to provide payphone service.***

(1) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate state Lifeline support must comply with state verification procedures to validate consumers' continued eligibility for Lifeline. The eligible telecommunications carrier must be able to document that it is complying with state regulations and verification requirements.

(2) By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers. Eligible telecommunications carriers may verify directly with a state that particular subscribers continue to be eligible by virtue of participation in a qualifying program or income level. To the extent eligible telecommunications carriers cannot obtain the necessary information from the state, they may survey subscribers directly and provide the results of the sample to the Administrator. Subscribers who are subject to this verification and qualify under program-based eligibility criteria must prove their continued eligibility by presenting in person or sending a copy of their Lifeline-qualifying public assistance card and self-certifying, under penalty of perjury, that they continue to participate in the Lifeline-qualifying public assistance program. Subscribers who are subject to this verification and qualify under the income-based eligibility criteria must prove their continued eligibility by presenting current income documentation consistent with the income-certification process in Sec. 54.410(a)(2). These subscribers must also self-certify, under penalty of perjury, the number of individuals in their household and that the documentation presented accurately represents their annual household income. An officer of the eligible telecommunications carrier must certify, under penalty of perjury, that the company has income verification procedures in place and that, to the best of his or her knowledge, the company was presented with corroborating documentation. The eligible

telecommunications carrier must retain records of these certifications.